

REMARKS

Claims 11-22 and 24-27 are pending in this application. All claims are under examination. No claim is allowed. The Examiner is respectfully requested to consider the following in response to the last Office Action mailed March 9, 2004.

This Reply is being timely filed and constitutes a "Submission" as that term is used in 37 C.F.R. § 1.114. A Request for Continued Examination is being filed concurrently with this Reply.

Double Patenting Issues

The Examiner is thanked for indicating the possible presence in this case of double patenting issues. With respect to co-pending application 10/291,473 there are presently no double patenting issues because the application has not yet matured as a patent. It is possible that continued prosecution of this case and of that case will result in claim limitations present in one or both cases that eliminate any double patenting issue.

With respect to the double patenting of claims 11-22 and 24-27 over U.S. Patent 6,554,620 ('620 Patent), the Examiner is respectfully requested to consider the following. The '620 Patent has a total of 17 claims only two of which are independent, namely claims 1 and 12. Claim 12 of the '620 Patent requires the presence of:

"either a plant extract obtained from one or more plants selected from the group consisting of aloe vera, green tea, low striped bamboo and dokudami (houltuynia herb) or a chemically manufactured equivalent of said extract".

The claims pending in the instant case do not require the presence of any plant extract. Therefore the monopoly of '620 Patent would not be extended by grant of any pending claim in this case. Neither U.S. Patent 5,632,676 (Kurschner) nor U.S. Patent 6,165,964 (Nishimoto) teaches elimination of a plant extract from the composition of the '620 Patent.

Claims 12 and 13 of the '620 patent are directed to an animal feed. The claims in the instant case are not directed to an animal feed and therefore present no issue of double patenting.

Issues under 35 U.S.C. § 103

The rejection of all pending claims as obvious over Kurschner in view of Nishimoto and U.S. Patent 6,352,727 (Takahashi) is traversed. It would not be obvious to combine the cited references in the manner suggested by the Examiner. The Examiner is respectfully requested to again consider the evidence of unexpected results presented in this case in the application as filed and in the various submissions under 37 C.F.R. § 1.132.

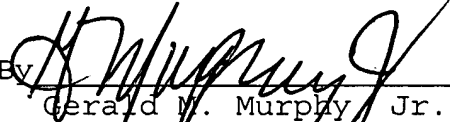
Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact David R. Murphy (Reg. No. 22,751) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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